

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JESSICA DURKIN, Plaintiff v. PACCAR, INC., et al. Defendant	Civil Action No. 1:10-cv-02013-JHR-AMD CERTIFICATION OF GERHARD P. DIETRICH IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
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I, Gerhard P. Dietrich, Esquire being of full age, hereby certify as follows:

1. I am an attorney-at-law in the State of New Jersey and a partner with the law firm of Ward Greenberg Heller & Reidy LLP, attorneys for defendant, Wabash National Corporation (hereinafter “Wabash”), in this matter, and I am fully familiar with the facts contained herein.

2. This certification is being submitted in support of the Motion for Summary Judgment directed to R.E. Pierson Construction Co. (hereinafter “Pierson”).

3. Attached hereto as Exhibit “A” is a true and accurate copy of the Police Report dated November 12, 2008.

4. Attached hereto as Exhibit “B” is a true and accurate copy of Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B, Part 393, Subpart I (10/01/99 Edition) reflecting amendments in 1973.

5. Attached hereto as Exhibit “C” is a true and accurate copy of the Federal Register Notice dated December 18, 2000.

6. Attached hereto as Exhibit “D” is a true and accurate copy of the Federal Register Notice dated September 27, 2002.

7. Attached hereto as Exhibit “E” is a true and accurate copy of an E-Trucker article dated October 10, 2002.

8. Attached hereto as Exhibit “F” is a true and accurate copy of comments of American Trucking Association dated December 16, 1996.

9. Attached hereto as Exhibit “G” is a true and accurate copy of comments of American Trucking Association dated March 19, 2001.

10. Attached hereto as Exhibit “H” is a true and accurate copy of Larry Minor’s FMCSA PowerPoint presentation with notes section.

11. Attached hereto as Exhibit “I” is a true and accurate copy of an E-Trucker article dated May 23, 2003.

12. Attached hereto as Exhibit “J” is a true and accurate copy of an E-Trucker article dated July 8, 2003.

13. Attached hereto as Exhibit “K” is a true and accurate copy of the Federal Motor Carrier Safety Administration’s Understanding Cargo Securement Rules.

14. Attached hereto as Exhibit “L” is a true and accurate copy of the Federal Motor Carrier Safety Administration’s Driver’s Handbook on Cargo Securement – A Guide to the North American Cargo Securement Standard.

15. Attached hereto as Exhibit “M” is a true and accurate copy of pertinent portions of the transcript from the deposition of Robert Donahue dated October 25, 2010, pp. 12-13, 31-33, 59-62, 73-77, 100-103.

16. Attached hereto as Exhibit “N” is a true and accurate copy of pertinent portions of the transcript from the deposition of Waldon White dated March 8, 2011, pp. 35-36, 107-110, 123-131, 157, 172, 186-194, 238-241, 261.

17. Attached hereto as Exhibit “O” are photographs depicting headerboards or bulkheads.

18. Attached hereto as Exhibit “P” are photographs depicting headache racks.

19. Attached hereto as Exhibit “Q” is a true and accurate copy of §393.100-134, Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B, Part 393, Subpart I (10/01/05 Edition) reflecting amendments in 2002.

20. Attached hereto as Exhibit “R” is a true and accurate copy of ACT N.A. Commercial Vehicle Outlook, Appendix B, Tables 17 and 18.

21. Attached as Exhibit “S” is a true and accurate copy of pertinent portions of the transcript from the deposition of Brooks Rugemer dated March 28, 2012, pp. 63-64, 78-79, 91-92, 94-95, 107-108, 132-135, 137-139, 144-153.

22. Attached as Exhibit “T” is a true and accurate copy of the Report of David Kemp dated October 13, 2011.

23. Attached as Exhibit “U” is a true and accurate copy of Aero Industries Frequently Asked Questions section copied from its website.

24. Attached as Exhibits “V” is a true and accurate copy of the Report of William Vigilante dated August 23, 2011.

25. Attached as Exhibits “W” is a true and accurate copy of the Report of Roger Dean Harris, without the appendices, dated August 24, 2011.

26. Attached as Exhibits “X” is a true and accurate copy of the Frequently Asked Questions section copied from Sturdy-Lite’s website.

27. Attached as Exhibits “Y” is a true and accurate copy of a page from the website of the Utility Trailers identity bulkhead options.

28. Attached as Exhibit “Z” is a true and accurate copy of pertinent portions of the transcript from the deposition of David Kemp dated April 20, 2012. pp. 29-31, 33-38.

29. Attached as Exhibit “AA” is a true and accurate copy of Appendix IV of Roger Dean Harris Report dated August 24, 2011.

30. Attached as Exhibit “BB” is a true and accurate copy of the Thomas Vadnais Report dated October 13, 2011.

31. Attached as Exhibit “CC” is a true and accurate copy of a pertinent page of the Bill of Materials, bates-stamped WNC130.

32. Attached as Exhibit “DD” is a true and accurate copy of Wabash sales documents, bates-stamped WNC1816-1818.

33. Attached as Exhibit “EE” is a true and accurate copy of Pierson trailer purchase screen, as produced by Pierson and bates-stamped WNC1392.

34. Attached as Exhibit “FF” is a true and accurate copy of the trailer repair history for the trailer at issue, as produced by Pierson and bates-stamped WNC1408-1409.

35. Attached as Exhibit “GG” is a true and accurate copy of pertinent portions of the transcript from the deposition of Terrence Boyle dated October 25, 2010. pp. 9, 11, 18, 20-21, 25, 31, 40-42, 46-47, 75-76, 80-82, 97-98, 102-106, 120-121, 134-135, 183-184.

36. Attached as Exhibit “HH” is a true and accurate copy of pertinent portions of the transcript from the deposition of Roger Dean Harris dated March 13, 2012. pp. 254-257, 270, 272-274, 275-77, 308-310.

37. Attached as Exhibit “II” is a true and accurate copy of pertinent portions of the transcript from the deposition of James Middleton dated March 16, 2012. pp. 124-126, 329-330, 344-345.

38. Attached as Exhibit “JJ” is a true and accurate copy of the Report of Frank Entwisle dated October 17, 2011.

39. Attached as Exhibit “KK” is a true and accurate copy of the Report of Tyler Kress dated October 20, 2011.

40. Attached as Exhibit “LL” is a true and accurate copy of the Police Report related to the Phillips accident dated February 18, 2008, as produced by Pierson and bates-stamped WNC1016-1020.

41. Attached as Exhibit “MM” is a true and accurate copy of the handwritten incident report related to the Phillips accident, completed by Phillips, as produced by Pierson and bates-stamped WNC3123.

42. Attached as Exhibit “NN” is a true and accurate copy of the Automobile Loss Notice related to the Phillips accident, as produced by Pierson and bates-stamped WNC3084.

43. Attached as Exhibit “OO” is a true and accurate copy of selected excerpts from the New Jersey Commercial Driver’s Manual, pp. 3-55 – 3-58, bates-stamped WNC5153-5156.

44. Attached as Exhibit “PP” is a true and accurate copy of pertinent portions of the transcript from the deposition of Denise Rathof dated June 30, 2011. pp. 24, 26, 29, 42, 51-54, 56-57, 74-79.

45. Attached as Exhibit “QQ” is a true and accurate copy of the DOT compliance review of Pierson dated June 10, 2009, as produced by Pierson and bates-stamped WNC3502-3509.

46. Attached as Exhibit “RR” is a true and accurate copy of the Pierson equipment list as of November 2008, as produced by Pierson and bates-stamped WNC1417-1424.

47. Attached as Exhibit “SS” is a true and accurate copy of Ronald Ashby’s Supplemental Report dated February 10, 2012.

48. Attached as Exhibit “TT” is a true and accurate copy of the Fleet Safety Evaluation dated September 22, 2003, as produced by Pierson and bates stamped 4483-4495.

49. Attached as Exhibit “UU” is a true and accurate copy of the Fleet Safety Evaluation Report dated October 28, 2005, as produced by Pierson and bates-stamped WNC4501.

50. Attached as Exhibit “VV” is a true and accurate copy of the Fleet Safety Evaluation Report dated May 8, 2006, as produced by Pierson and bates-stamped WNC4511 - 4513.

51. Attached as Exhibit “WW” is a true and accurate copy of the Drivers/Vehicle Examination Reports related to Pierson and produced by the New Jersey State Police, Dep. Exhibit D-69.

52. Attached as Exhibit “XX” is a true and accurate copy of the Drivers/Vehicle Examination Reports related to Pierson and produced by the New Jersey State Police, Dep. Exhibit D-70.

53. Attached as Exhibit “YY” is a true and accurate copy of Gangell’s application for employment dated August 23, 2003, as produced by Pierson and bates-stamped WNC798 and WNC799.

54. Attached as Exhibit “ZZ” is a true and accurate copy of Gangell’s Massachusetts Commercial Driver’s License, as produced by Pierson and bates-stamped WNC804.

55. Attached as Exhibit “AAA” is a true and accurate copy of Gangell’s Massachusetts driving record, as produced by Pierson and bates-stamped WNC802-803.

56. Attached as Exhibit “BBB” is a true and accurate copy of Gangell’s New Jersey Commercial Driver’s License, as produced by Pierson and bates-stamped WNC825.

57. Attached as Exhibit “CCC” is a true and accurate copy of the Federal Motor Carrier Safety Regulations Pocket Book Pierson claims was provided to Gangell, as produced by Pierson and bates-stamped WNC928-929, WNC1354-1384.

58. Attached as Exhibit “DDD” is a true and accurate copy of pertinent portions of the transcript from the deposition of Amy Stone dated October 10, 2011. pp. 27-28, 30.

59. Attached as Exhibit “EEE” is a photograph showing a bail-recognizance form and a true and accurate copy of a receipt for payment of citation, bates-stamped WNC2950 and WNC3063.

60. Attached as Exhibit “FFF” is a true and accurate copy of the Report of Jacob Fisher dated October 19, 2011.

61. Attached as Exhibit “GGG” is a true and accurate copy of pertinent portions of the transcript from the deposition of Jacob Fisher dated March 30, 2012. pp. 24-25.

62. Attached as Exhibit “HHH” is a photograph depicting the location of the inspection label and name plate on the trailer at issue, deposition exhibit 90.

63. Attached as Exhibit “III” is a photograph of the FMCSA inspection label of the trailer at issue, deposition exhibit 91.

64. Attached as Exhibit “JJJ” is a photograph of the name plate of the trailer at issue, deposition exhibit 89.

65. Attached as Exhibit “KKK” are photographs depicting the 80,000 GVW label on the truck door, bates-stamped PACCAR 0572, 0574.

66. Attached as Exhibit “LLL” is a photograph depicting the Ancra strap warning which was on the trailer at issue.

67. Attached as Exhibit “MMM” is a true and accurate copy of pertinent portions of the transcript from the deposition of Kary Nelson dated December 6, 2010. pp. 15-18.

68. Attached as Exhibit “NNN” is a true and accurate copy of pertinent portions of the transcript from the deposition of Larry James McKelvey dated October 26, 2010. pp. 92-93.

69. Attached as Exhibit “OOO” is a true and accurate copy of pertinent portions of the transcript from the deposition of Trooper Pecenak dated January 31, 2011. pp. 54.

70. Attached as Exhibit “PPP” is a true and accurate copy of Report of Ronald Ashby dated October 5, 2011.

71. Attached as Exhibit “QQQ” is a true and accurate copy of a letter from Nancy Winkler, Esquire and related emails.

72. Attached as Exhibit “RRR” are photographs depicting the presence of cigarettes in the truck-tractor after the accident, as produced by Pierson and bates-stamped WNC3024-3026.

73. Attached as Exhibit “SSS” are photographs depicting the aftermath of the incident at issue, bates-stamped WNC1716, WNC1718, WNC1720, and WNC1736.

74. Copies of Exhibits QQ, TT, UU and VV are not being included with the copy of this Certification being filed electronically to allow an opportunity to discuss with Pierson's counsel whether Pierson is asserting that those documents are subject to the Discovery Confidentiality Order entered on June 28, 2010 (Doc 59). However, the Discovery Confidentiality Order provides that copies of such documents may be provided to the Court and personnel so those exhibits will be included with the courtesy copy being served on Judge Rodriguez and provided to plaintiff's counsel.

I certify that the foregoing statements are true. I understand that if any of these statements are willfully false I am subject to punishment prescribed by law.

WARD GREENBERG HELLER & REIDY LLP

By: /s/ Gerhard P. Dietrich
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Attorney for Defendant,
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Dated: July 6, 2012